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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/970,547	10/03/2001	Glen Jorgensen	18405-115	1371

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EXAMINER

SORKIN, DAVID L

ART UNIT	PAPER NUMBER
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1723

DATE MAILED: 02/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/970,547

Applicant(s)

JORGENSEN ET AL.

Examiner

David L. Sorkin

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16, 18, 19, 35 and 36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-15, 18, 19, 35 and 36 is/are rejected.
- 7) ☐ Claim(s) 3 and 16 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 4-14, 18, 19, 35 and 36 are rejected under 35 U.S.C. 102(b) as being anticipated by Wahtola (US 599,273). Note: regarding the preambles of claims 1, 35 and 36, particularly the statement of intended use “for a continuous flow centrifuge”, it has being held that, “where a patentee defines a structurally complete invention in the claim body and uses the preamble only to state a purpose or intended use for the invention, the preamble is not a claim limitation” *Rowe v. Dror*, 42 USPQ2d 1550, 1553 (Fed. Cir. 1997). Note also regarding the statements of what passages are “for” and/or “dedicated for”, “the manner or method in which such a machine is to be utilized is not germane to the issue of patentability of the machine itself” *In re Casey*, 152 USPQ 235 (CCPA 1967). Further regarding claim 1, Wahtola ('273) discloses an apparatus comprising a plurality of axially aligned processing chambers and expressor chambers (corresponding to the hemispheres 12, 13, 18, 20, 23 and 25, pairs of chambers being separated by diaphragms 28), each chamber including an axial opening housing a central hub (see Fig. 1), wherein a respective hub (31) of a respective chamber includes at least one first dedicated passageway (43) axially aligned substantially parallel to a central axis of the hub dedicated for fluid communication with a first chamber and at

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least one second dedicated passageway (53) aligned substantially parallel to the central axis of the hub for fluid communication with a second chamber. Regarding claim 2, said processing chambers and said expressor chambers are alternately arranged (see Fig. 1). Regarding claim 4, said processing chamber and expressor chambers are flexible and expandable (see page 1, lines 90-91). Regarding claim 5, the processing and expressor chambers are in releasable contact with each other at a circumferential portion of the chambers (see page 1, lines 65-67, Fig. 1). Regarding claim 6, the central hubs are constructed and arranged to prevent construction of an apparatus having two adjacent processing chambers (see drawings). Regarding claim 7, the central hubs are constructed and arranged to prevent construction of an apparatus having two adjacent expressor chambers (see drawings). Regarding claim 8, the central hubs have multiple passages for fluid communication (see drawings). Regarding claim 9, the central hubs comprise a number of passages for fluid communication there is at least equal to the number of chambers in the apparatus (see drawings). Regarding claim 10, a plurality of weld rings (23,29) are disposed on the central hubs. Regarding claim 11, the processing chambers and expressor chambers are substantially the same shape (see Fig. 1). Regarding claim 12, the processing chambers are small than the expressor chambers. Regarding claim 13, the processing chambers and expressor chambers are substantially circular (see drawings). Regarding claim 14, the processing chambers and expressor chambers have substantially the same diameter (see Fig. 1). Regarding claim 35, Wahtola (US 599,273) discloses an apparatus comprising a plurality of axially aligned processing chambers (corresponding

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to the hemispheres 12, 13, 18, 20, 23 and 25 or a subset thereof), each chamber including an axial opening housing a central hub (see Fig. 1) wherein a respective hub of a respective chamber includes at least one first dedicated passageway (43) aligned substantially parallel to a central axis of the hub dedicated for fluid communication with a first chamber and at least one second dedicated passageway (53) aligned substantially parallel to the central axis of the hub for fluid communication with a second chamber. Regarding claim 36, Wahtola (US 599,273) discloses an apparatus comprising at least one processing chamber and at least one axially aligned expressor chamber (corresponding to the hemispheres 12, 13, 18, 20, 23 and 25 or a subset thereof), each chamber including an axial opening housing a central hub, wherein a respective central hub of a respective chamber includes at least one first dedicated passageway (43) dedicated for fluid communication with a first chamber and at least one second dedicated passageway (53) aligned substantially parallel to the central axis of the hub for fluid communication with a second chamber. Regarding claims 18 and 19, a fluid entry hub is disposed at a fluid entry point of the plurality of chambers (see Fig. 1).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wahtola (US 599,273). In the apparatus of Wahtola ('273), discussed above, the processing chambers are of the same diameter as the expressor chambers. However, as held in *Gardner v. TEC Systems* 220 USPQ 777 (Fed. Cir 1984), quoting MPEP 2144.04, "where the only difference between the prior art and the claims was a recitation of relative dimensions and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device".

Allowable Subject Matter

5. Claims 3 and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

6. Applicant's arguments are moot in view of the new grounds of rejection.

Conclusion

7. Applicant's amendment necessitated the new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not


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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David L. Sorkin whose telephone number is 571-272-1148. The examiner can normally be reached on 9:00 -5:30 Mon.-Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L. Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


David L. Sorkin
Primary Examiner
Art Unit 1723

DLS